

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Brian K. Fenner,

Debtor(s).

Chapter 7

BK 03-38636 DDO

SUPPLEMENT TO MOTION TO DISMISS CHAPTER 7 CASE

1. The United States Trustee filed a motion to dismiss under 11 U.S.C. § 707(a) and (b), and the matter is set for hearing on September 22, 2004, at 10:00 a.m.

2. Since the motion was filed, the debtor moved to another state and filed an amended Schedule I and J. Att. Ex. 1.

3. The United States Trustee requested that the debtor verify the changes on amended Schedule I and J. Att. Ex. 2.

4. The debtor provided pay stubs from his new employment, which show that he has net income for 80 hours of work period in the amount of \$ 1,613.14. This amount x 26 and divided by 12 = \$ 3,495.14 average net pay per month. Att. Ex. 2.

5. The debtor submitted a copy of his new lease in the monthly amount of \$ 1,250.00. Att. Ex. 3. The debtor did not provide an explanation as to how the cost of the lease was split between the debtor and the other party named on the lease.

6. Net income of \$ 3,495.14 - amended Schedule J of \$ 3,168 [includes full \$ 1,250 in rental payment] - boat \$ 275.00 = monthly disposable income of \$ 602.14 per month, which would enable the debtor to pay \$ 21,677.04 or 56% of his general unsecured debts in a hypothetical Chapter

13 plan.

7. In addition, the debtor may have other unreasonable expenses on amended Schedule J besides the issue of household expenses. The payment to the IRS of \$ 100 per month on amended Schedule J will pay off the IRS in full in five months, the \$ 100 payment for checking plus loan appears to be improperly listed on Schedule J, as the checking account was only disclosed to have \$ 200 in it on the filing date, so the loan should be unsecured; and food was increased to \$ 400 in the amended Schedule J. The United States Trustee requested that the food and check plus loan be further explained, but received no response on those issues. The Eighth Circuit Court of Appeals holds that a bankruptcy court may reject the credibility of amended schedules when the amendments are offered after a Section 707(b) motion is filed and the amended schedules seek to decrease income and/or increase expenses because the debtor swore as to the accuracy of the initial schedules. *Fonder v. United States*, 974 F.2d 996, 1000 (8th Cir. 1992). The Eighth Circuit Court noted that Schedule I and Schedule J were specifically proposed as amendments in 1984 to address the issue of abuse: “When Congress enacted § 707(b) in 1984, it also added the requirement that debtors file an Income/Expense Schedule ‘[t]o facilitate addressing the question of abuse in Chapter 7 cases.’” 3 *Norton Bankruptcy Law and Practice* § 69.01, n. 12 (1991); see 11 U.S.C. § 521(1).” *Id.* at 999. Therefore, the requirement of accuracy in those schedules, relative to a Section 707(b) motion, is as important as for any other schedule filed in a bankruptcy case. The failure of the debtor to adequately explain these adjustments is cause to question their validity.

WHEREFORE, the United States Trustee supplements his pending motion and respectfully requests that this chapter 7 case be dismissed.

Dated: September 14, 2004

Respectfully submitted,

HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500
(612) 664-5516

Exhibit 1

In re **Brian K. Fenner**Case No. **03-38636**

Debtor

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
Divorced	RELATIONSHIP None.	AGE
EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Design Engineer	
Name of Employer	Tip N Ring, LLC	
How long employed	1 month	
Address of Employer		

INCOME: (Estimate of average monthly income)

Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)

Estimated monthly overtime

SUBTOTAL

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security

b. Insurance

c. Union dues

d. Other (Specify)

SUBTOTAL OF PAYROLL DEDUCTIONS

TOTAL NET MONTHLY TAKE HOME PAY

Regular income from operation of business or profession or farm (attach detailed statement)

Income from real property

Interest and dividends

Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

Social security or other government assistance

(Specify)

Pension or retirement income

Other monthly income

(Specify)

TOTAL MONTHLY INCOME

TOTAL COMBINED MONTHLY INCOME \$ **3,099.00**

DEBTOR

SPOUSE

\$ **4,613.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **4,613.00** \$ **N/A**\$ **1,389.00** \$ **N/A**\$ **125.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **1,514.00** \$ **N/A**\$ **3,099.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **0.00** \$ **N/A**\$ **3,099.00** \$ **N/A**

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document: **New job / new location**

In re Brian K. FennerCase No. 03-38636

Debtor

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$	<u>1,250.00</u>
Are real estate taxes included? Yes _____ No <u>X</u>		
Is property insurance included? Yes _____ No <u>X</u>		
Utilities: Electricity and heating fuel	\$	<u>150.00</u>
Water and sewer	\$	<u>70.00</u>
Telephone	\$	<u>50.00</u>
Other _____	\$	<u>50.00</u>
Home maintenance (repairs and upkeep)	\$	<u>0.00</u>
Food	\$	<u>400.00</u>
Clothing	\$	<u>75.00</u>
Laundry and dry cleaning	\$	<u>50.00</u>
Medical and dental expenses	\$	<u>0.00</u>
Transportation (not including car payments)	\$	<u>150.00</u>
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$	<u>100.00</u>
Charitable contributions	\$	<u>0.00</u>
Insurance (not deducted from wages or included in home mortgage payments)		
Homeowner's or renter's	\$	<u>30.00</u>
Life	\$	<u>0.00</u>
Health	\$	<u>0.00</u>
Auto	\$	<u>100.00</u>
Other _____	\$	<u>0.00</u>
Taxes (not deducted from wages or included in home mortgage payments)		
(Specify) _____	\$	<u>0.00</u>
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)		
Auto	\$	<u>218.00</u>
Other <u>Boat</u>	\$	<u>275.00</u>
Other <u>IRS Payment</u>	\$	<u>100.00</u>
Other <u>Checking Plus Loan</u>	\$	<u>100.00</u>
Alimony, maintenance, and support paid to others	\$	<u>0.00</u>
Payments for support of additional dependents not living at your home	\$	<u>0.00</u>
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	<u>0.00</u>
Other _____	\$	<u>0.00</u>
Other _____	\$	<u>0.00</u>
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	\$	<u>3,168.00</u>

[FOR CHAPTER 12 AND 13 DEBTORSONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$	<u>N/A</u>
B. Total projected monthly expenses	\$	<u>N/A</u>
C. Excess income (A minus B)	\$	<u>N/A</u>
D. Total amount to be paid into plan each _____	\$	<u>N/A</u>
(interval)		

Exhibit 2



FILE COPY

U.S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Direct Dial: (612) 664-5504
Fax: (612) 664-5516
e-mail: Sarah.J.Wencil@usdoj.gov

August 18, 2004

Mary Jo Jensen-Carter
Buckley & Jensen
1339 East County Road D
Vadnais Heights, MN 55109

Re: Brian K. Fenner, Bankr. No. 03-38636

Dear Ms. Jensen-Carter:

This Section 707(b) case has been continued to September 22, 2004. You have filed an amended Schedule I and J on behalf of your client. This letter is to clarify those items on the amended schedules that the U.S. Trustee has questions regarding. The U.S. Trustee would like to see the following documents:

1. Copies of three most recent pay stubs from Mr. Fenner's new employment;
2. Copy of new lease and/or mortgage contract;
3. Please set forth the basis for the increase in food expenses to \$ 400.00 per month.
4. Please explain what the checking plus loan is and why the repayment listed on Schedule J. What is the total outstanding balance of this loan.

Please call if you have a question or concern about this letter.

Sincerely,

HABBO FOKKENA
UNITED STATES TRUSTEE

Sarah J. Wencil
Trial Attorney

Exhibit 3

TIPNRING, L.L.C.

Employee
Fenner, Brian K. 9218 Boehm Drive, Lenexa, KS 66219

SSN 471-94-0860
Status (Fed/State)
Single/Single & All Other Filers
Pay Period: 07/22/2004 - 08/04/2004

Allowances/Extra
Fed-1/0/KS-1/0
Pay Date: 08/06/2004

6699

Earnings and Hours	Qty	Rate	Current	YTD Amounts
Salary	80.00		2,307.69	8,999.99
Hourly				692.40
Salary Holiday				230.77
			2,307.69	9,923.16

Taxes	Current	YTD Amounts
Federal Withholding	-400.00	-1,657.00
Social Security Employee	-143.08	-615.24
Medicare Employee	-33.47	-143.89
KS - Withholding	-118.00	-489.00
	-694.55	-2,905.13

Adjustments to Net Pay	Current	YTD Amounts
Mileage Reimbursement		145.20

Net Pay 1,613.14 7,163.23

Paid Time Off	Used	Available
Sick	0.00	5.00
Vacation	0.00	9.30

Tip N Ring, L.L.C., 2111 E. Santa Fe, Suite 170, Olathe, Ks. 66062 800-982-3672 / 913-254-6100, TipNRing, L.L.C.

Exhibit 4

LEASE AGREEMENT

-VILLAS OF LOIRET-

This agreement, made and entered into this day 7 of APRIL, 2004 by and between LOIRET PARTNERS, LLC herein referred to as "Landlord", and

SUSAN STRINGER & BRIAN FENNER
hereinafter referred to as "Tenant".

For the consideration of the obligations of the parties hereto, it is hereby agreed as follows:

1. Premises Landlord does hereby lease to Tenant, and Tenant leases from Landlord the following premises:

9218 BOEHM DRIVE, LENEXA, KS 66219

Said premises shall be occupied by no more than 4 person(s), and utilized solely for the purpose of residential dwelling.

2. Term of Agreement. The term of this Lease Agreement shall commence on the 1st day of MAY

and terminate on the 30th day of APRIL, 2005, and, unless is terminated as provided herein, this lease shall be automatically renewed for successive additional terms of one (1) year unless sixty (60) days prior written notice is given by either party on or before the end of the term and on or before the end of each renewal term thereafter. Any such renewal shall be on the same terms and conditions as those contained herein except that the monthly rental amount shall be the market rent as disclosed to Tennant prior to the end of the term.

The sixty (60) day written notice is required to be given on or before the 1st day of MARCH 2005.

3. Terms of Payment. Tenant agrees to pay to Landlord rent in the term amount of FIFTEEN

THOUSAND + NO/100 (Dollars) (\$ 15,000-) in equal and successive amounts of

(\$ 1250-) per month, prorated to and due and payable in advance on or before the first calendar day of each and every month hereafter until this tenancy shall be terminated pursuant to the terms of this Agreement. All payments of rent are payable to:

LOIRET PARTNERS, LLC
PO Box 7624
Overland Park, Kansas 66207

or at such place as the Landlord may designate in writing. Should Tenant fail to pay, and/or Landlord not receive the said monthly rental amount on or before the close of the business day on the 5th day of each month, or the next business day should the 5th fall on a weekend or legal holiday, Tenant agrees to pay a late charge of Fifty Dollars (\$50.00) in addition to the regular monthly rental, and Tenant further agrees that should the monthly rental amount together with the said late charge not be paid to the Landlord on or before the last business day of the month, the late charge shall be added to and become rent. Further, upon return of an insufficient funds check issued by the Tenant and payable to Landlord, or a stop payment check, or the return of any check for any reason whatsoever, Tenant agrees to pay the late charge above stated and to immediately satisfy the face amount of the returned check by replacing same with a cashier's check or money order, and Tenant agrees to pay a return check charge of Fifty Dollars (\$50.00)

4. Security Deposits. (a) The Tenant has deposited the sum of ONE THOUSAND + NO/100

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Brian K. Fenner,

Chapter 7

Debtor(s).

BK 03-38636 DDO

CERTIFICATE OF MAILING

I, Terri Frazer, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers.


That on September 14, 2004, I served a copy of the Proposed Notice of Hearing, Motion to Dismiss Under 11 U.S.C. §707, Memorandum of Law in Support of Motion to Dismiss; and proposed Order in the above-referenced case by fax upon debtor's counsel and by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Mary Jo Jensen Carter
Buckley & Jensen
1339 East County Road D
Vadnais Heights, MN 55109

Michael S. Dietz
206 South Broadway, Suite 505
First Federal Building
P O Box 549
Rochester, MN 55903-0549

Brian Fenner
9218 Boehm Drive
Lenexa KS 66219



**Office of the United States Trustee
Terri Frazer**